UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,038	11/12/2001	Sunao Takatori	2222.6080000	1387

26111   7590   05/02/2008
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EXAMINER
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ART UNIT	PAPER NUMBER
2619	

MAIL DATE	DELIVERY MODE
05/02/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _01/07/2008_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1,3-19 (claim 2 is canceled)_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1 and 3-19_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☒ All   b) ☐ Some *   c) ☐ None of:

      1. ☒ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

01/07/2008 has been entered.

2.   Claims 1-19 are pending in the application. Claim 2 is canceled. Claims 11-19

are new.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

        The claimed invention in claims 12-19 is directed to non-statutory subject

matter.

        Claim 12 recite the limitation of   "A computer-readable medium containing

instructions for controlling ….." does not comply with the 101 interim guidelines

set forth therein (please refer to pages 52-53 of the 101 interim guidelines). It is

well established that a computer program product or a software product, per se is

not a physical "thing" and does not define any structural and functional

interrelationship between the computer program code and the rest of the

computer, which permits the computer program's functionality to be realized.

Claim 16 recite the limitation of "A program product comprising a tangible

computer useable medium having computer program logic recorded thereon for

enabling a processor…." does not comply with the 101 interim guidelines set

forth therein (please refer to pages 52-53 of the 101 interim guidelines). It is well

established that a computer program product or a software product, per se is not

a physical "thing" and does not define any structural and functional

interrelationship between the computer program code and the rest of the

computer, which permits the computer program's functionality to be realized.

In order for a computer program or software instructions to be statutory it

must be embodied (encoded) in a computer-readable medium capable of being

executed by a computer for the computer program's functionality to be realized.

Thus the claimed invention in independent claims 12, 16 and dependent

claims 13-15, 17-19 is for a software product or a program which is non-statutory.

Appropriate corrections are required for these claims without introducing

any new matter to the disclosure.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s)12-19 contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 12-19 recites the limitation of "computer-readable medium" or "computer-useable medium" which are not disclosed in the original specification and hence these claims introduces a new subject matter which was not disclosed in the original specification. Therefore these claims must be canceled or modified to remove the new subject matter. Appropriate corrections are required to claims 12-19.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6.   Claims 1, 3-5, 7-10, 12-19 are rejected under 35 U.S.C.102(e) as being

anticipated by Alfano et al [US Pat: 6,094,423].

Regarding claim 1, Alfano et al in the invention of "Wireless Protocol Method and

Apparatus Supporting Transaction Requests With Variable Length Responses"

disclosed a device **(Fig 6)** comprising: a determining device **(processor, item 58 of Fig**

6) configured to select a most appropriate packet unit **(MTU, Maximum transfer unit**

size) for transmission data to be packetized that minimizes the amount of transmission

data **(col 5, lines 45-63)**, herein the packet unit determining unit only selects the most

appropriate packet unit being recognizable by a destination communication terminal

device **(server)** ; and a packet configured to packetize the transmission data based on a

packet unit determined by said determining device **(col 5, lines 64-67, col 6, col 6, line**

1).

Regarding claims 3-4, Alfano et al disclosed that at least one of a transmitter and

receiver **(item 54 of Fig 6)** configured to transmit and receive a query about packet

units that are recognizable by the destination device **(col 5, lines 64-67, col 6)** and a

storage device configured to store information with respect to the packet units that are

recognizable by the destination device **(RAM, item 66 of Fig 6, col 6, lines 5-23)**.

Regarding claim 5, Alfano et al disclosed that if a retransmission request occurs

while packets are being transmitted **(col 4, lines 42-49, Fig 4)**, the determining device

is configured to determine a smaller appropriate packet unit than the previously

determined appropriate packet unit transmitting data subsequent to the retransmission request according a smaller packet **(col 4, lines 50-54, Fig 4)**.

Regarding claims 7,12 Alfano et al disclosed a method for determining packet units for transmission data to be packetized and transmitted from a communication terminal device **(communication device, item 50, Fig 6)** to a destination communication device **(server)**, the method: determining packet units **(MTU, Maximum transfer unit size)** recognizable by said destination communication selecting a packet unit recognizable by said destination communication device to minimize the amount of transmission data **(col 5, lines 45-63)** and packetizing said transmission data according to the packet unit selected **(col 5, lines 64-67, col 6, line 1)**.

Regarding claim 8, 13 Alfano et al disclosed transmitting said packetized transmission data from said communication terminal device to said destination communication device **(col 5, lines 45-51).**

Regarding claim 9, 15, Alfano et al disclosed determining whether the information regarding packet units recognizable by said destination communication device is stored in a memory of said communication terminal device **(RAM, item 66 of Fig 6, col 6, lines 5-23)**.

Regarding claim 10, 14, Alfano et al disclosed generating a retransmission request after said transmitting step requesting a different packet unit size **(col 6, lines 5-7, Fig 7)**; repacketizing said transmission data into a different packet unit size according to said retransmission request; and transmitting said repacketized

transmission data to said destination communication device **(col 6, lines 7-16, item 112 of Fig 7)**.

Regarding claim 16, Alfano et al disclosed a computer program product comprising a tangible computer useable medium having computer program logic recorded thereon for enabling a processor to determine packet units for transmission data to be packetized and transmitted from a communication terminal device **(communication device, item 50, Fig 6)** to a destination communication device **(server)**, the computer program logic **(Figs 6/7)** comprising: determining means for enabling the processor **(processor, item 58 of Fig 6)** to determine packet units recognizable by the destination communication device **(server)**; selecting means for enabling the processor to select a packet unit **(MTU)**, recognizable by the destination communication device, to minimize the amount of transmission data **(col 5, lines 45-63)**; and packetizing means for enabling the processor to packetize the transmission data according to the packet unit selected **(col 5, lines 64-67, col 6, col 6, line 1)**.

Regarding claim 17, Alfano et al disclosed transmitting and receiving means **(item 112 of Fig 7)** for enabling the processor to transmit and receive a query about packet units that are recognizable by the destination communication device **(col 6, lines 5-37)**.

Regarding claim 18, Alfano et al disclosed storing means for enabling the processor to store information with respect to the packet units that are recognizable by the destination communication device **(RAM, item 66 of Fig 6, col 6, lines 5-23)**.

Regarding claim 19, Alfano et al disclosed wherein if a retransmission request

occurs while packets are being transmitted, the determining means enables the

processor to determine a smaller appropriate packet unit than the previously determined

appropriate packet unit **(col 5, lines 9-16).**

7.   Claims 6, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by

Yanagidate et al [US Pub: 2002/0099632].

Regarding claims 6, Yanagidate et al disclosed a billing file generating device

(Fig 2, para 0040) configured to generate a billing file **(HTML document, para 0056,**

Fig 5) comprising information for billing which includes the type of a transmitted packet

unit **(service class ID, Fig 8)**, the number of transmitted packets **(para 0079)**, and a

packet communication rate **(para 0062)**, with respect to an identification (ID) to be

billed; and a charging file generating device configured to generate a charging file for

the ID to be billed for a predetermined period **(para 0055-0057, Fig 5).**

Regarding claim 11, Yanagidate et al disclosed wherein the charging file is

transmitted to a communications terminal device of the ID to be billed through an e-mail

message **(HTML document, para 0057-0058).**

Conclusion

8.   Any inquiry concerning this communication or earlier communications should be

directed to the attention to Venkatesh Haliyur whose phone number is 571-272-8616.

The examiner can normally be reached on Monday-Friday from 9:00AM to 5:00 PM. If

attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Edan Orgad can be reached @ (571)-272-7884. Any inquiry of a general

nature or relating to the status of this application or proceeding should be directed to the

group receptionist whose telephone number is (571)-272-2600 or fax to 571-273-8300.

9.   Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197(toll-free).

/Venkatesh Haliyur/

Examiner, Art Unit 2619

/Edan Orgad/

Supervisory Patent Examiner, Art Unit 2619